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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FER 26 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition For Declaratory Ruling of the)	
Cellular Telecommunications & Internet)	
Association)	

COMMENTS OF THE INDEPENDENT ALLIANCE

The Independent Alliance ("Alliance") hereby responds to the Commission's invitation to comment on the Cellular Telecommunications & Internet Association ("CTIA") petition requesting the Commission to rule that wireline carriers have an obligation to port their customer's telephone numbers to Commercial Mobile Radio Service ("CMRS") providers whose service area overlaps the wireline carrier's rate centers ("CTIA Petition").'

The CTIA Petition seeks a Commission ruling requiring that wireline carriers be obligated to port a wireline number, which has a fixed geographical identity within a rate center area, to a wireless provider that has the capability and obvious intent of allowing the subscriber to use the number on a mobile basis well outside the boundaries of the original service location "rate center" area. Such an obligation can in no way be considered porting to "the same location," as is required by the statute, nor does it fit the Commission's definition of "service provider portability." Instead, this type of porting clearly fits the definition of "location

¹ *Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas: Public Notice*, CC Docket No. 95-116, DA 03-211 (rel. January 27, 2003).

portability,” an obligation which the Commission has already determined is not required by statute and would be contrary to the public interest. The CTIA Petition is not consistent with the record that currently exists with respect to service provider number portability. Accordingly, the Commission should deny the CTIA request for a declaratory ruling

I. CTIA’s Petition Should Be Rejected Because it Seeks to Impose on Wireline Carriers a Requirement That Does Not Exist.

In its petition, CTIA urges the Commission to declare that wireline carriers are obligated to port numbers to any wireless carrier with an overlapping service area, without any conditions regarding where the number will be used.² This would result in “location portability” which is not required of LECs either by the Act or by the Commission’s Rules. Section 251(b)(2) of the Communications Act of 1934 (the “Act”) requires all local exchange carriers (“LECs”) to “provide to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” The Act defines number portability as “the ability of users of telecommunication services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” In promulgating its number portability rules, the Commission cited this definition and determined that the Act requires “service provider portability” but not “location portability.” The Commission defined “service provider

² **CTIA** Petition at 3

³ 47 U.S.C. § 251(b)(2)

⁴ 47 U.S.C. § 153(30) (emphasis supplied)

⁵ See *In the Matter of Telephone Number Portability: First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, **8447** (1996) (“*First Report and*

portability” as “the ability of end users to retain the same telephone numbers (that is, the same NPA and NXX codes and the same line numbers) when changing from one service provider to another.”⁶ In contrast, “location portability” is “the ability of end users to retain the same telephone numbers when moving from one location to another, either within the area served by the same central office or between areas served by central offices.”

CTIA attempts, but fails, to address the fact that it seeks location portability “which the Commission has declined to require.”* CTIA has not and cannot provide any explanation of how such a ported number would be confined in use to the same locale as the statutory definition requires. Instead, CTIA merely states, “[w]hen a CMRS carrier’s service area overlaps the wireline rate center, the wireless carrier is providing service within the rate center, thus satisfying the requirements for service provider portability.” By this statement, CTIA demonstrates its failure to consider the consequences of its petition -- that the telephone number would not simply be moved from one carrier to another but that the number can and will move from its original

Order”).

⁶ *In [he Matter of Telephone Number Portability: Notice of Proposed Rulemaking]*, 10 FCC Rcd 12350, 12355 (1995) (“*NPRM*”).

⁷ *Id.* at 12356 (emphasis supplied).

⁸ CTIA Petition at n. 5.

⁹ *Id.* CTIA’s reliance is misplaced and goes to the essence of the new issues raised by the petition that the Commission has never addressed. Simply because a CMRS carrier may be capable of providing wireless mobile service at points within a rate center area, it does not follow that *the user* of the telephone number either intends to use, or will use, the **ported** number for service confined to that rate center; *i.e.*, service provider portability. CMRS carriers typically provide service to their mobile users across large geographic areas; many provide service on a nationwide basis, and wireless carriers typically do not specifically limit the customer’s use to a fixed location or to locations within a specific rate center.

rate center location and be utilized for service in other rate centers, exchanges, and states. This result is factually the essence of location portability. CTIA cannot avoid the facts -- it seeks location portability, not service provider portability.”

If a number is ported from a wireline carrier to a wireless carrier that provides mobile telephone service in areas outside of the LEC service territory through its own system and/or through roaming agreements, the ported telephone number can be used beyond the locale of the wireline service provider. For the vast majority of CMRS carriers and mobile users, the number will be used for service at locations well beyond the original rate center.” By definition, this type of porting allows use beyond “the same location,”¹² and, instead, permits the mobile user to make and receive calls “when moving from one location to another,” specifically constituting location portability.¹³

In its ***First** Report and Order*, the Commission specifically determined not to require location portability. The Commission further distinguished the two aspects of portability by

¹⁰ It was the wireless carriers that first observed that they provide location portability. See *First Report and Order*, 11 FCC Rcd at 8446 (FCC citing CTIA and wireless carrier commenters as “arguing that wireless carriers already provide significant location portability”).

¹¹ Again, the only exception may be where a CMRS carrier operates as a local exchange carrier and confines its mobile user to the specific rate center area. Most CMRS carriers do not currently provide such service. As examples of CMRS carriers that may operate in such a manner, see *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services: Sixth Report*, FCC 01-192 at 33-34 (rel. July 17, 2001) (FCC referencing CMRS providers who are offering service plans “designed to compete directly with wireline local telephone service” and providing examples of wireless carriers such as Leap that do not permit subscribers to roam).

¹² See 47 U.S.C. § 153(30).

¹³ *First Report and Order*, 11 FCC Rcd at 8443.

declaring that although the Act's mandate is limited only to service provider portability, the Commission is not precluded from mandating location portability "if it would be in the public interest."¹⁴ The Commission then determined that, at the present time, mandating carriers to implement location portability was not in the public interest," but permitted state regulatory bodies to make the determination on a state-by-state basis. In order to change these existing rules and policies, the Commission must first develop and consider the necessary factual record. Consequently, the CTIA Petition is procedurally inappropriate and should be denied."

¹⁴ ~~First~~ *Report and Order*, 11 FCC Rcd at 8447. The Commission also noted that the Act does not prevent carriers from voluntarily providing location portability if they so choose. *Id.* However, as discussed in the following footnote, there are significant technical limitations that make location portability infeasible without causing customer confusion and disrupting carriers' services.

¹⁵ *Id.* at 8449. The Commission found that, among other reasons, imposing location portability at this time would cause consumer confusion by the loss of the geographic identity of the telephone number. As a result, customers would not know whether they were making a call to a nearby location or to a distant location and may not know whether the call would be subjected to toll charges. *Id.* at 8448. Moreover, with the change in location, LECs' service offerings, switching, and routing of originating calls to the ported number would need to be changed. *See also Id.* at 8449 (Commission citing the New York Department of Public Service's observation that the only way to avoid the customer confusion which would result from location portability was to limit location portability to a rate center). The Commission also noted that commenting parties observed that location portability would create unnecessary and burdensome costs on carriers and on directory, operator, and emergency services providers. *Id.* at 8444-5.

¹⁶ CTIA also argues that the FCC has limited wireline local number portability to the existing rate center boundaries of the incumbent LEC. CTIA Petition at 5. CTIA supports this assertion by citing a North American Numbering Council ("NANC") recommendation that was adopted by the Commission and is codified in Section 52.26 of the Commission's Rules. 47 C.F.R. § 52.26. The reference to the NANC recommendation, however, is misused. Rather than applying to the form of service provider portability which the statute and Commission rules require, the NANC statement applies to location portability if and when a state commission requires its imposition. The NANC recommendation states, "[i]f location portability is ordered by a state commission in the context of Phase I implementation of LRN, location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns." NANC LNPA Selection Working Group Report, dated April 25, 1997,

II. If the Commission Wishes to Address Issues Raised in the CTIA Petition, It Should Do So in a Rulemaking Proceeding With Proper Notice and Comment.

CTIA's petition raises novel issues by asserting that wireline carriers are obligated to port numbers to CMRS carriers that could utilize the numbers well beyond the service areas with which the numbers are associated. The Commission should not ignore either its past rulings or existing facts. With regard to wireline service, carriers and customers expect a continued and relevant association of the NPA-NXX with a specific geographic location. The Commission's current rules reflect an understanding of customer and carrier expectations. The change in existing policy cavalierly proposed by the CTIA declaratory ruling request not only ignores appropriate administrative process, but also disregards an aspect of the public interest that should not be overlooked -- the customer's interest and expectations.

The Alliance does not deny the immediate attraction that may exist with respect to the potential ability of a customer to port a wireline number to a wireless service provider. The Alliance suggests, however, that mandating this change has many factual ramifications (both in terms of technical issues and economic issues) and public interest aspects that reflect a substantial departure from the established utilization of NPA-NXX's in the wireline network on a geographic-specific location basis. In a CMRS context, where the customer's location is clearly mobile, there is no expectation that the CMRS customer's NPA-NXX has any geographic

("NANC 1997 Report") Appendix D at Section 7.3 (emphasis supplied). In its petition, however, CTIA cites the NANC 1997 Report and improperly places it in the context of service provider portability rather than location portability. CTIA Petition at 5. A subsequent NANC recommendation, that is not codified in Commission Rules, also misquotes this provision when it attributes the previous statement to service provider portability. NANC LNPA Working Report, dated May 8, 1998 at 42. CTIA's argument is based on an incorrect, if not misleading, premise, and, accordingly, should be rejected. Regardless of the misuse of this reference, the cited language limits number portability to rate centers and/or district boundaries.

significance, or has any necessary relation to a specific rate center area. If the Commission elects to disassociate the assignment of numbers from location, altogether, it should do so only after appropriate consideration in a rulemaking process.

CTIA appears to recognize implicitly that number portability in a CMRS environment -- where numbers have no geographic location significance -- essentially amounts to location portability. By its petition, CTIA appears to be telling the Commission, “we do not like number portability at all, but if you are going to impose it on the wireless industry, we are going to attempt to tear down everything” -- without regard to the distinct geographic use of NPA-NXX’s in wireline networks, and in the absence of appropriate administrative process.

111. Conclusion

The Commission has not mandated location portability, but rather has found portability between wireline and wireless carriers to be in the public interest only insofar as it promotes service provider portability. Accordingly, the Commission should dismiss CTIA's flawed "declaratory ruling" request. If the Commission determines that the petition raises issues which require further consideration, the Commission should not entertain the issues in the context of a declaratory ruling, but rather consider those issues in the context of a notice and proposed rulemaking proceeding

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Independent Alliance" in CC Docket No. 95-116 was served on this 26th day of February 2003, via hand delivery to the following parties:


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